

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN D. SHEPHERD

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Appeal No. 2004-1876  
Application No. 09/887,929

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ON BRIEF

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Before KIMLIN, GARRIS, and PAWLIKOWSKI, Administrative  
Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 8. Claim 1 is representative of the subject matter on appeal and is set forth below:

1. A process for preparing an aqueous emulsion polymer comprising providing at least one ethylenically unsaturated monomer and a free radical redox initiator system under emulsion polymerization conditions, said redox initiator system consisting essentially of t-alkyl

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hydroperoxide, t-alkyl peroxide, or t-alkyl perester wherein the t-alkyl group includes at least 5 Carbon atoms and a non-formaldehyde-forming reducing agent; and effecting the polymerization of at least some of said ethylenically unsaturated monomer.

On page 5 of the Brief, appellant states that the claims stand or fall together. We therefore consider claim 1 in this appeal. 37 CFR § 1.192(c)(7) and (8) (2003).

The examiner relies upon the following references as evidence of unpatentability:

Leighton et al. (Leighton)	5,415,926	May 16, 1995
Mudge et al. (Mudge)	5,540,987	July 30, 1996

Claims 1 through 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mudge or Leighton.

#### **OPINION**

We refer to pages 2 through 4 of the Answer and incorporate the examiner's statements made therein as our own.

Appellant argues that Mudge and Leighton's examples are directed to a t-Bu HP. However, as discussed by the examiner, each of these references clearly disclose a t-amyl HP, which is a t-alkyl group that includes at least 5 carbon atoms. Also, we note that a reference is not limited to its examples, but is available for all that it fairly discloses and suggests. See In re Widmer, 353 F.2d 752, 757, 147 USPQ 518, 523 (CCPA 1965).

Furthermore, as in the case of In re Petering, 301 F.2d 676, 681, 133 USPQ 275, 279 (CCPA 1962), an anticipation rejection is appropriate when the prior art reference discloses a specific limited class. In the case of In re Petering, that class contained 20 compounds, and the court found this size of a class to anticipate the claimed subject matter. Here, both Mudge and Leighton each discloses even a smaller class. That is, each of these references discloses that the "[h]ydrophobic hydroperoxides include, for example, tertiary butyl hydroperoxide, tertiary amyl hydroperoxide, cumene hydroperoxide and the like." See column 5, lines 65 through 68 of Leighton and see column 2, lines 3 through 6 of Mudge. Hence, as concluded by the court in In re Petering, one skilled in the art would, on reading the patent, "at once envisage each member of this limited class, even though this skilled person might not at once define in his mind the formal boundaries of the class as we have done here." 301 F.2d at 681, 133 USPQ at 280.

In view of the above, we therefore sustain the examiner's 35 U.S.C. § 102(b) rejection. Because this rejection is under 35 U.S.C. § 102(b), we need not address appellant's comments regarding their samples 1 through 3 and comparative examples A through D. Such comparative analysis is only useful for rebutting an obviousness rejection, and not an anticipation rejection. See, In re Papesch, 315 F.2d 381, 386-87, 137 USPQ 43, 47-48 (CCPA 1963).

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CONCLUSION

The rejection, under 35 U.S.C. § 102(b), of claims 1 through 8 as being anticipated by Mudge or Leighton is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 35 U.S.C. § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD PATENT
BRADLEY R. GARRIS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
BEVERLY A. PAWLIKOWSKI	)	
Administrative Patent Judge	)	

BAP:psb

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